IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 421 OF 2004

Tukaram Ranu Pawar & Ors..... ....
Appellants. V/s
(Orig.Accd.)
The State of Maharashtra ....
Respondents.

Mr.R.W.Adik, Sr.Adv. With N.Chomal, Sachin Kadam & Peter Lobo, Adv. for the appellants.

Smt.V.R.Bhosale, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

11th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Sessions Judge, Nashik in Sessions Case No.149 of 2002 on 22.01.2004 the appellants-accused have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story is that the accused are related to each

other. Tukaram and Gangaram are real brothers being sons of Ranu Pawar and accused No.3-Sangita Pawar is the wife of Tukaram. They have another brother by name Suresh. The accused stayed near the house of that Suresh Pawar. Janabai was wife of Suresh Pawar. According to the prosecution on 6.5.2002 when deceased Janabai was in her house, the accused No.3 came to her and asked her the reason for her instigation to her husband to quarrel with them for no reason. In the midst of the quarrel, the accused Nos. 1 and 2 entered her house. They started abusing her. They caught hold of her and the accused No.3 brought a plastic can containing kerosene from the house and pouring it on her set her ablaze. She ran outside the house screaming loudly for help. The persons in the bazaar extinguished the fire on her person as she was alone in the house. Her mother-in-law and her husband had gone to the bazaar. However, the accused Nos. 1 and 2 took her to the Bytco hospital where she was admitted and was undergoing treatment. She had sustained 90 percent superficial deep burns. The fact was informed by the medical officer who attended Janabai to the police station. On such information, Station House Officer directed the Head Constable to record the dying declaration of the patient Janabai admitted in the hospital.

4. It was on the basis of this report that investigation was commenced and the accused-appellants were charge sheeted. The

prosecution examined eight witnesses to prove its case that the accused persons caused homicidal death of the victim Janabai. The defence examined one witness and the learned trial Judge on appreciation of evidence came to the conclusion of guilt and convicted the accused as aforesaid. It is this order of conviction and sentence which is impugned in this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us. The learned counsel arguing on behalf of the appellants pointed out that there are in all three dying declarations on record. He took us through the dying declarations and pointed out several contradictory statements existing therein. He showed us improvements which took place in the dying declarations. He pointed out alterations which were material in nature in all these declarations and therefore contended that the dying declarations have no value and conviction cannot be sustained on the basis of such dying declarations. This submission was opposed by the learned additional public prosecutor and he submitted that we need not consider all three dying declarations, the first one is adequate which is duly proved and therefore it can form basis of the conviction and consequently submitted that no interference is called for.

5. We have examined all the dying declarations, the first one was recorded at 12 noon of 6.5.2002. This was duly proved by the person who recorded it. It was recorded by Shri G.V.Satpute, Special

Executive Magistrate. The document bears endorsement and carries certificate of the doctor that the patient is conscious and fully oriented before recording the statement. The endorsement is signed by doctor and proved by him in the Court. Similar endorsement occurs at the end of the certificate by same doctor who has identified it. In this dying declaration recorded in question and answer form what has been stated by the witness is that she was put on fire by Gangaram Ranu Pawar, Tukaram Ranu Pawar and Sangita Tukaram Pawar. She describes by saying that Gangaram and Tukaram held her and Sangita poured kerosene on her and put on fire. They she states that she was removed to the hospital by Gangaram and Tukaram and then she specifically charges them of having committed the act. The dying declaration confirms all the requirements under the rules for recording of dying declaration. Certificate of duly qualified medical practitioner is obtained before commencement of recording and after completion of recording of statement. The certificate given by the doctor is proved. This is therefore a complete proved document on record in which allegation is squarely made on the accused persons that they committed the act.

6. We scrutinized another dying declaration which was recorded on 8.5.2002 by same Executive Magistrate. This also is recorded in question and answer form and here the victim gives completely

different version as to what happened. Here she says that while she was cooking her sari caught fire and therefore she was burnt. Then she says that at that time her children and mother-in-law were sitting in the ota in front of the house. She then claims that fire on her person was doused by people passing by and she was taken to the hospital by her husband Suresh Pawar. Then she says that the earlier statement made by her was in pains and she has no complaint against any one. This certificate also has the endorsement of the medical officer before commencement of recording of statement and completion of statement. Both the endorsements are proved. The declaration is proved. Both the statements were treated as dying declarations as the victim died thereafter.

7. We need not go into other aspects of the evidence at all as because beyond this declaration there is no evidence on record to prove the case of the prosecution. It is specific case of the prosecution that it was these three accused who because of their previous enmity put the victim on fire and now we have two statements recorded by responsible officer certified by another responsible officer stating exactly contrary to each other. In the first dying declaration she says that at the time of incident she was alone in the second she says that her children and mother-in-law were sitting outside the house. In the first declaration she says the fire was put off by people passing by, she

was taken to the hospital by Gangaram and Tukaram i.e. the accused persons. In the second statement she says that the children and mother-in-law were there in the house and yet fire was doused by people passing by and she was admitted to the hospital by her husband Suresh Pawar. In the first statement she categorically complains about the accused persons and in second statement she specifically and emphatically says that she has no grievance against anybody and the earlier statement made by her was made when she was in acute pains. Question is therefore which of the two statements are liable to be considered as valid.

8. It is a settled position in law that statement recorded under section 32 of the Indian Evidence Act is treated as solemn statement made by a person who at the time of making it was on death bed and consequently dies. The presumption is that a man when on death bed will not lie or will not unnecessarily frame anyone or will not withhold the truth and that is why such dying declaration has a sanctity and evidenciary value in criminal jurisprudence. It is taking into consideration this evidenciary of dying declaration that it has been consistently held by the Supreme Court of India that properly proved dying declaration in itself is sufficient to record conviction. The basis for such laying down of law is the fact that dying declarations are recorded as sacrosanctus statement made by dying man. We have to

test these two dying declarations made by the victim in this case in the background of this law. The question which naturally arises is which of the two statements are true. Taking into consideration the fact that both are recorded by the Executive Magistrate and signed by medical officer the factum of institution of these statements cannot be disputed and the only conclusion which therefore arises is that the victim was not telling the whole truth on either of the occasions. If the first recorded statement is correct statement then there is no reason why the second statement was recorded. There is no explanation on record as to the necessity of recording the second statement and yet it was recorded wherein she absolves everybody of any liability and categorically states that she caught fire accidentally. Even if it is assumed that she made second statement to save accused persons at the instance of some one else there is no reason why there should be variance of other material particulars also. It is inexplicable that a person who is present near the scene of offence and is related to the victim yet do nothing to put fire off and people passing by would have rescued the victim. If it is so, there is no explanation why she was taken to the hospital by accused persons. The fact that they took her to hospital is not only stated in this declaration but is also proved by intrinsic evidence of case papers of the victim on which endorsement is that she was admitted to hospital by Gangaram and Tukaram i.e.

accused persons. Then in the second statement she categorically says that her husband admitted her in the hospital when factually it is proved to be wrong. In such circumstances it creates a reasonable doubt in the minds of ordinary prudent man as to what is the truth and if truth is not what is reflected by documents in the circumstances proved in this case it becomes extremely risky to uphold conviction as recorded by the learned trial Judge. The possibility of her framing in-laws cannot be overruled in such circumstances and at the same time possibility of her being overpowered also cannot be ruled out. Admittedly fire was put off by people passing by. None of them is examined. The incident occurred in a busy locality and yet no evidence is led by the prosecution. The benefit of reasonable doubt arising out of existing and proved circumstances in such case must go to the accused. In our opinion, the learned trial Judge erred in convicting the accused in the fact of such contradictory dying declarations with no other supporting evidence. In the result, therefore, the appeal succeeds and is allowed. The order of conviction and sentence passed by the learned trial Judge is set aside. The accused are acquitted of all the charges leveled against them. They are in jail. They be set at liberty forthwith if not required in any other case.